

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Wireless E911 Location Accuracy	)	PS Docket No. 07-114
Requirements	)	
	)	

**WINDY CITY CELLULAR, INC.  
PETITION FOR TEMPORARY WAIVER**

Windy City Cellular, Inc. (“Windy City” or “the Company”), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Rules of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> and Paragraph 157 of the Commission’s *Fourth Report and Order*,<sup>2</sup> hereby seeks a temporary waiver of Section 20.18(i) of the FCC’s rules (Indoor location accuracy for 911 and testing requirements). In particular, Windy City requests that the Commission waive the indoor accuracy requirements and various reporting requirements, because no public safety answering points (“PSAPs”) or local emergency authorities with responsibility for Windy City’s service area have requested Phase II Enhanced 911 (“E911”) service, and none are capable of receiving or utilizing Phase II location or indoor location data. As a result, Windy City has neither procured nor installed the equipment and services necessary to generate Phase II ALI or indoor location data, and it would be a meaningless waste of scarce resources with no public interest benefit for the Company to comply with indoor location standards and reporting requirements of Rule Section 20.18(i) in the absence of a capable PSAP

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<sup>1</sup> 47 C.F.R. §§ 1.3 and 1.925.

<sup>2</sup> *Wireless E911 Location Accuracy Requirements*, Fourth Report and Order, 30 FCC Rcd 1259, at ¶ 157 (2015) (discussing the applicable waiver standards) (“*Fourth Report and Order*”).

or local authority. Windy City respectfully requests a temporary waiver of the Commission's indoor accuracy provisions and reporting rules up to and until a PSAP or other local emergency authority with responsibility for Windy City's service area is capable of receiving and using Phase II E911 and indoor location data and the Company has received a valid request for such data.

## **I. BACKGROUND**

Windy City is a very small business that provides cellular voice and data services on Adak Island, a remote community in Alaska's Aleutian Islands that is located in an earthquake zone, in the vicinity of an active volcano and frequented by tsunamis. The Company is a minority and veteran-owned business that serves less than 50 mobile subscribers, but its services are extremely valuable to the citizens and businesses of Adak and roaming customers who visit the island. Due to the remoteness of its service area, the low population density, and the challenging weather and terrain, Windy City relies on the FCC's high cost funding programs to maintain its wireless network.

There are no PSAPs authorized by the State of Alaska to serve Adak, and no full-time police officers stationed on the island. The City of Adak operates a fire and EMS facility that is limited to volunteer staffing only. It should therefore come as no surprise that Windy City has not received any requests for E911 service as of the date of this waiver request. As a result, the Company has not had any practical reason to spend its extremely limited resources on implementing solutions to provide indoor location and Phase II E911 data that cannot be received, processed or used by a PSAP or local authorities.

In 2015, the Commission adopted amendments to its E911 rules which established new indoor location accuracy requirements at Section 20.18 (i). The requirements as initially adopted included an exemption for service providers that did not have a PSAP partner capable of receiving and utilizing indoor location data. The exemption specified:

The requirements set forth in paragraphs (d) through (n) of this section shall be applicable only to the extent that the administrator of the applicable designated PSAP has requested the services required under those paragraphs and such PSAP is capable of receiving and utilizing the requested data elements and has a mechanism for recovering the PSAP's costs associated with them.

However, the Commission subsequently issued an *Erratum* that removed this condition without explanation. In the *Erratum*, the limitation of 911 accuracy rules (*i.e.*, to the extent that the PSAP has requested and is capable of receiving and utilizing the requested data) was changed to apply only to paragraphs (d) through (h)(2) and paragraph (j) of Section 20.18. Paragraphs (d) through (h)(2) address Phase I (call back number and cell site) and Phase II (location of 911 calls by longitude and latitude. Paragraph (j) covers delivery of confidence and uncertainty (c/u) data. Therefore, the “no capable PSAP” exception was changed by the *Erratum* to apply only to Phase I, to Phase II outdoor rules, and to the c/u requirements. Left missing from the no capable PSAP exception – without any explanation – was paragraph (i) – indoor location accuracy for 911 and testing requirements. This change is all the more curious because the same rule will only allow a PSAP to request FCC enforcement of the indoor location requirements if it has “implemented policies that are designed to obtain all location information made available by CMRS providers when initiating and delivering 911 calls to the PSAP.”

## II. APPLICABLE WAIVER STANDARDS

In general, the FCC's rules may be waived for good cause shown.<sup>3</sup> Waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."<sup>4</sup> The FCC may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>5</sup> Section 1.925(b)(3) of the Rules provides that the Commission may grant a waiver of its rules pertaining to wireless radio services if it is shown that: (i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative." Under WAIT Radio and Northeast Cellular Telephone Company, a rule waiver "may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question."

In the context of the E911 location accuracy *Fourth Report and Order*, the Commission has clarified that any CMRS provider that is unable to comply with the E911 indoor location rules may seek waiver relief pursuant to Sections 1.3 and 1.925 of the Rules.<sup>6</sup> As shown herein,

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<sup>3</sup> 47 C.F.R. § 1.3.

<sup>4</sup> See *AT&T Wireless Services, Inc. et al. v. Federal Communications Commission*, No. 00-1304 (D.C. Cir. 2001), citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

<sup>5</sup> See generally, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); see also *Northeast Cellular* (D.C. Cir. 1990).

<sup>6</sup> See *Fourth Report and Order*, 30 FCC Rcd 1259, at ¶ 157.

Windy City meets the criteria for a temporary waiver of requirements to submit to the FCC live 911 call data reports, indoor location accuracy certifications, implementation plans and progress reports required by FCC Rule Sections 20.18(i)(3)(ii)(E), 20.18(i)(3)(iii), 20.18(i)(4)(i), and 20.18(i)(4)(ii).

### **III. Good Cause Exists to Grant Windy City a Temporary Waiver of the Indoor Location Rules**

Good cause exists to grant Windy City a temporary waiver of the indoor location rules and related reporting requirements. It is a provider of CMRS service that has no E911-capable PSAPs or other local emergency authority in its service area and it has not yet received any request for E911 Phase I or Phase II service. In the absence of a PSAP request and capability to receive and use indoor location data, it would be futile to require a very small Tier III CMRS provider with limited resources to deploy indoor location capability and to submit to the FCC the FCC live 911 call data reports, indoor location accuracy certifications, implementation plans and progress reports required by Section 20.18 (i). The Commission made Phase I and Phase II E911 capability contingent on a CMRS carrier's receipt of a valid PSAP request because it makes little sense to force service providers – and especially smaller carriers like Windy City – to divert their limited resources to implementing a capability that emergency responders in their area are unable to use. These limited resources might otherwise be available to extend and maintain voice and data services in and around the City of Adak, as well as remote portions of Adak that might not otherwise have access to any emergency calling lifeline. In order for Windy City to enable E911 and indoor location capability, Windy City's network engineer would need to visit the company's remote cell sites to have someone climb each tower to install equipment. This would be impacted by the extremes of Alaskan weather, a limited 3- to 4-month construction season,

and logistics issues associated with getting equipment delivered to Adak, which is over 1,200 miles southwest of Anchorage and is accessible only by boat or by plane.

The Commission recognizes the public interest benefit in granting a waiver when “special circumstances particular to smaller carriers may warrant limited relief from 911 requirements.”<sup>7</sup> Circumstances such as “financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural, or characterized by difficult terrain (such as dense forest or mountains)” are present with respect to Windy City’s remote and very rural service area. Significant compliance costs would be wasted in Windy City’s case, and it would be unduly burdensome for the Company to devote its limited personnel and resources to preparing periodic reports to the FCC and public safety organizations about E911 call activity and location accuracy that doesn’t exist because no PSAP or other local emergency authority is in a position to use the data.

Windy City further submits that in light of the unique facts and circumstances in its case, has no choice but to request a waiver of the Rule Section 20.18 (i) requirements. Because it lacks a capable PSAP partner, the Company has not deployed the necessary hardware and software in its CMRS network to enable the provision of E911 service, or to generate the location data necessary to comply with the indoor location rules and reporting requirements. Requiring Windy City to implement Phase II capability only so that it has the ability to prepare compliance reports – *i.e.* without any corresponding PSAP or public safety benefit – would be unduly burdensome for the Company and would be contrary to the public interest. Until such

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<sup>7</sup> *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petitions for Waiver of Section 20.18(g)(1)(v) of the Commission’s Rules*, Order, 22 FCC Rcd 8927, at ¶7 (2007).

time as Windy City has received a valid PSAP request for the services in question, the Company has no reasonable alternative but to request a waiver of the Rule Section 20.18 (i) requirements. A waiver is also justified because the Commission announced an exemption from the indoor location requirement in a reasoned action in the relevant E911 order, and the exemption was only later removed by what appeared to be a mere editorial erratum that contained no announcement of or justification for changing significant substantive requirements. At a minimum, this approach caused confusion among service providers subject to the location information requirement.

#### **IV. CONCLUSION**

Windy City is committed to providing its subscribers and roaming customers with access to high quality voice and data services when traveling through its remote service area, and will implement E911 location services when a PSAP in its service area is capable of receiving, processing and utilizing the location data requests such services. Requiring Windy City to expend its limited resources for delivery of accurate location data in the absence of a request for such services from local emergency authorities makes no sense and would be contrary to the public interest. At the same time, grant of this Petition will help ensure that basic emergency calling service remains available in areas where callers might not otherwise have access to mobile wireless services. For the reasons stated above, Windy City respectfully requests that the Commission grant it a temporary waiver of the location collection, delivery and reporting requirements set forth in Section 20.18(i) of the Commission's Rules.

Respectfully Submitted,

**WINDY CITY CELLULAR, INC.**



By: 

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## DECLARATION

I, Andilea Weaver, hereby declare under penalty of perjury as follows:

1. I am the Vice President and Chief Operating Officer of Windy City Cellular, Inc.
2. I have reviewed the foregoing Petition for Temporary Waiver to be filed with the Federal Communications Commission and verify that the factual information and representations therein are true and correct to the best of my knowledge, information and belief.



\_\_\_\_\_  
Name

\_\_\_\_\_  
May 30, 2017

\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

I, Cary Mitchell, hereby certify that on this 30<sup>th</sup> day of May, 2017, copies of the foregoing PETITION FOR TEMPORARY WAIVER were sent by e-mail, in pdf format, to the following:

Michael Wilhelm, Acting Division Chief  
Policy and Licensing Division  
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A handwritten signature in black ink, appearing to read 'Cary Mitchell', is written above a horizontal line.

D. Cary Mitchell, Esq.